

Appendix R

DCA FHEO Policy, Language Access Plan Template & Guidance



Georgia

Department of Community Affairs

60 Executive Park South, NE, Atlanta, GA 30329

Section 3 Policy for Covered HUD Funded Activities

This Section 3 policy pertains to training, employment contracting, and other economic opportunities arising in connection with the expenditure of Federal housing assistance and community development assistance that is used in conjunction with the following activities:

- Housing rehabilitation,
- Housing construction, and
- Other public construction.

All Recipients and Sub-recipients of Section 3 Covered Assistance (including but not limited to contractors, sub-contractors, developers, grantees, CHDOs, non-profits, and local government entities) must be in compliance with the provisions of this policy in order to be eligible for DCA awards.

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SOLICITATION PACKAGE AND CERTIFICATION DOCUMENTS

BACKGROUND ON THE SECTION 3 REGULATION:

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992 (Section 3), is to "ensure that employment and other economic opportunities generated by certain HUD financial funding shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed toward low and very low-income persons, particularly those who are recipients of government funding for housing and to Business Concerns which provide economic opportunities to low- and very low-income persons."

Consistent with 24 CFR Part 135, as a recipient of HUD Housing and Community Development Funding, the State of Georgia Department of Community Affairs (DCA) requires fulfillment of Section 3 obligations on all contracts subject to 24 CFR Part 135 that make use of that assistance. These policies are implemented for contract amounts as specified in 24 CFR Part 135 whether it is designated as housing construction, housing rehabilitation, lead based paint abatement, or other public construction project. DCA works to ensure the provision of employment, training, contracting, and other economic opportunities to low-income persons. In doing so, DCA utilizes Section 3 as a means of promoting stability and self-sufficiency of Section 3 Residents. Implementation procedures may be amended periodically by DCA to insure that the policy requirements are being met and/or to enhance the efficiencies of compliance.

PART I. APPLICABILITY:

Section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992. Section 3, as amended, requires that economic opportunities generated by Federal Housing and Community Development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

Section 3 requirements apply to all housing rehabilitation, housing construction or other public construction projects, and activities for which the recipient or sub recipient's award exceeds \$200,000 and the contract or subcontract exceeds \$100,000. If the recipient or sub recipient's award of assistance exceeds \$200,000, but the contracts and subcontracts do not exceed \$100,000, then only the recipient or sub recipient is subject to the Section 3 requirements. The recipient or sub recipient's responsibility includes awarding contracts, to the greatest extent feasible, to Section 3 business concerns.

PART II. DEFINITIONS:

Please refer to the 24 CFR 135.5 for a full list of prevailing definitions found in the regulation.

Employment Opportunities Generated by Section 3 Covered Assistance: All employment opportunities generated by the expenditure of applicable Federal Section 3 covered funding (i.e., Housing and Community Development Funding) and with respect to Section 3 covered Housing and Community Development Funding, all employment opportunities arising in connection with Section 3 Covered Projects.

Full-Time: For recipient, sub-recipients, and contractors, this term refers to an employee assigned to a position who regularly works a minimum of forty (40) hours per week on a continuous basis. For DCA, this term refers to an employee who is assigned to an unclassified position who regularly works a minimum of forty (40) hours per week on a continuous basis. Regular full-time employees will be eligible to receive full State-sponsored benefits and accrue any form of service credit.

Housing and Community Development Funding: Resources from the U.S. Department of Housing and Urban Development (HUD) covered by Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) include Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Solutions Grant (ESG), Housing Opportunities for Persons with AIDS (HOPWA), and Neighborhood Stabilization (NSP) programs, as well as certain grants awarded under HUD Notices of Funding Availability (NOFAs). The requirements for Section 3 only apply to the portion(s) of covered funding used for project/activities involving housing construction, rehabilitation, demolition, and/or other public construction.

Low Income Person: A person whose household (including single persons) has a total income that does not exceed 80% of the median income for the project area. Income levels can be obtained online at: <https://www.huduser.gov/portal/datasets/il.html>.

New Hires: Full-time employees for at-will, permanent, temporary or seasonal employment opportunities for any Section 3 covered contract.

Recipient: An entity which receives Section 3 covered assistance directly from HUD (i.e., DCA) or from any other recipient (e.g., local government, PHA or other public body, public or private non-profit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, Community Housing Development organization, resident management corporation, resident council, or cooperative association). For the purpose of this policy, the phrase, "any other recipient" will carry the same definition as "Sub-recipient" and may include DCA in cases when program terminology establishes a "Recipient" as any entity receiving an award of DCA funds under a HUD-funded program.

Resident Owned Business (ROB): A Business Concern owned or controlled by low or very low-income residents who reside within the legal boundaries where the funds are expended. A ROB must meet these requirements: (a) at least 51% owned and operated by Section 3 residents, and (b) whose management and daily business operations are controlled by one or more such individuals. For purposes of Section 3 compliance, a ROB must also meet Subpart A to the definition of a Section 3 Business Concern.

Section 3: Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 Resident:

- (1) A public housing resident; or
- (2) An individual who resides in the area in which the Section 3 covered assistance is expended, and who is a low-income person whose household income does not exceed 80% of the average median income for the area or a very low-income person whose household income does not exceed 50% of the average median income for the area as per Section 3(b) (2) of the U.S. Housing Act of 1937 (1937 Act).

To find the current Average Median Income go to:

<https://www.huduser.gov/portal/datasets/il.html>

Section 3 Business Concern: As defined by HUD, an entity:

- A. That is Fifty-one (51%) percent or more owned by Section 3 Residents; or
- B. Whose permanent, full-time employees includes persons, at least 30 percent of whom are current Section 3 Residents, or were Section 3 Residents within three (3) years of the date of first employment with the Business; or
- C. That provides evidence of a commitment to subcontract in excess of 25 percent of the total contract award amount (including any modifications) to Section 3 Business Concerns as defined in A or B. Example: If the Contract Amount is = \$1,000,000, the contractor must subcontract in excess of 25%, or greater than \$250,000, to a Section 3 Business Concern (s) as defined in A or B in this part.

Section 3 Clause: The contract provisions and sanctions set forth in 24 CFR 135.38

Section 3 Covered Activity: Any activity that involves housing construction, rehabilitation, or other public construction funded by Section 3 covered assistance.

Section 3 Covered Assistance: The requirements of Part 135 apply to Recipients of covered Section 3 Housing and Community Development Funding for which the amount of the assistance exceeds \$200,000. These requirements also apply to contractors and subcontractors performing

work on projects using Federal Housing and Community Development Funding from DCA for which the Recipient's award exceeds \$200,000 and the contract or subcontract exceeds \$100,000. If the Recipient or Sub-recipient's award of assistance exceeds \$200,000, but the contracts and subcontracts do not exceed \$100,000, then only the Recipient or Sub-recipient is subject to the Section 3 requirements. The Recipient's responsibility includes awarding contracts, to the greatest extent feasible, to Section 3 business concerns.

Section 3 Covered Contract: A contract or subcontract, including a professional service contract, awarded by a recipient, sub-recipient, or contractor for work generated by the expenditure of Section 3 Covered Assistance or for work arising in connection with a Section 3 Covered Project. "Section 3 Covered Contracts" do not include contracts for the purchase of supplies and materials except whenever a contract for materials includes the installation of the materials.

Section 3 Covered Project: The construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with applicable Federal Housing and Community Development Funding.

Section 3 Joint Venture: An association of Business Concerns, one of which qualifies as a Section 3 Business Concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the Business Concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 Business Concern:

- Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- Performs at least 25% of the work and is contractually entitled to compensation proportional to its work.

Sub-recipient: Any public or private agency, institution, organization, or other entity (e.g. Local government, Public Housing Authority, public or private non-profit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, Community Housing Development organization, resident management corporation, resident council, or cooperative association) to whom Federal financial assistance is extended, through the Georgia Department of Community Affairs for any program or activity, or who otherwise participates in carrying out such program or activity but such term does not include any Beneficiary under any such program. The term "Sub-recipient" may include the term "Recipient" when program terminology establishes a "Recipient" as any entity receiving an award of DCA funds under a HUD-funded program.

Very Low Income Person: A person whose household (including single persons) has a total income that does not exceed 50% of the median family income for the project area.

PART III. GOALS OF THE SECTION 3 REGULATION:

DCA's Section 3 protocol seeks to aid Section 3 residents to the greatest extent feasible in three ways, listed in order of preference:

A. Hiring low- and very low-income workers

DCA requires that a recipient or sub-recipient and its contractors make every effort within their disposal to attempt to hire at least 30% Section 3 residents of the aggregate number of full-time new hires with a preference for Section 3 residents in this order:

- 1: Residents of HUD-assisted housing.
- 2: Residents at the site where the work is being performed.
- 3: Residents of the city where the work is being performed.
- 4: Residents of the county where the work is being performed.

B. Awarding contracts to Section 3 business concerns

DCA requires that the recipient or sub-recipient, and its contractors make every effort within their disposal to award at least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction, and other public construction, to Section 3 business concerns. DCA also requires that the recipient or sub-recipient and its contractors make every effort within their disposal to award at least 3% of the total dollar amount of all "Other" Section 3 covered contracts.

C. Providing other economic opportunities

If a recipient, sub-recipient, or contractor identifies a greater need, other training and employment opportunities may be provided to substitute for goals A and B. In such cases, a recipient, sub-recipient, or contractor must provide training and other employment opportunities as described in Part VII equal to or exceeding 3% of the total contract award in order to meet this goal.

PART IV. RECIPIENT AND SUBRECIPIENT RESPONSIBILITIES:

The recipient or sub recipients of DCA Housing and Community Development Funding accept the responsibility of not only enforcing the Section 3 requirements, but also for pro-actively providing notice, encouraging, and facilitating compliance with Section 3 subject to the definition of a Section 3 Covered Project. The recipient or sub-recipient will have fulfilled this responsibility when they can provide evidence that the following have occurred in the case of every contract and sub-contract solicitation that exceeds the threshold requirements of 24 CFR Part 135:

The following actions are required for all contract and sub-contract solicitations:

- A) Notifying Section 3 residents of opportunities through posting of job openings in community sources that are generally available to low income residents and the general public, including but not limited to: the local community newspaper; the most widely distributed newspaper; the management office of the local housing authority, or homeless agency, or/local low-income housing community; the local workforce board; the local office of the Georgia Division of Family and Children Services; and the local office of the Georgia Department of Public Health serving the county in which the project is located.
- B) Conveying that the contract work is a Section 3 Covered Contract in any advertisement for bids and proposals by placing the following language in each advertisement/public notice and website: **"This project is covered under the requirements of Section 3 of the HUD Act of 1968."**
- C) Notifying contractors of Section 3 requirements in any pre-bid or pre-construction meeting held.
- D) Incorporating the HUD mandated Section 3 clauses in all contracts where the work to be performed is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).
- E) Providing Resident Certification and Affidavit forms for employment at the recipient or sub-recipient's business offices and allowing applications to be submitted at appropriate local locations.
- F) Encouraging the training of Section 3 residents by the contractors.
- G) Reporting quarterly on its efforts regarding Section 3 implementation on the DCA prescribed mechanism or form.
- H) Refusing to award contracts to businesses or persons that have previously violated Section 3 requirements.
- I) Using the attached Solicitation Package for each procurement associated with a covered project indicating that the work to be performed is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).
- J) Documenting actions taken to comply with Section 3 requirements including all results and impediments using the DCA prescribed mechanism or form.

Recipients or Sub-recipients also must implement at least one (1) of the following actions:

- K) Facilitating an opportunity fair annually for contractors to meet interested Section 3 residents for possible employment. A list can be developed as a resource for the recipient or sub-recipient and contractors when seeking to hire Section 3 workers in the future.
- L) When employment opportunities arise or are anticipated, posting all job sites funded by DCA with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting. The sign should be no smaller than 24" x 24" in Black ink and specifically read:

"This project is covered under Section 3 of the HUD Act of 1968 which requires that any new hiring opportunities first be directed to low- and very low income persons in this community. Please contact (list the contact person name and number) for information on any employment, contracting and sub-contracting opportunities."

PART V. RECIPIENT, SUB-RECIPIENT, AND CONTRACTOR RESPONSIBILITIES:

All recipient, sub-recipients, and contractors must submit prior to an award exceeding \$100,000 the prescribed forms in the attached solicitation package describing their proposal to implement Section 3. Omission of a satisfactorily completed solicitation package prior to award makes that contractor ineligible for award. Regardless of the amount of the potential contract award, all recipient, sub-recipients, and contractors that wish to claim a Section 3 preference must submit with any bid or proposal the *Section 3 Self-Certification and Action Plan* and the *Section 3 Business Concern Self Certification* that is part of the attached solicitation package. Prior to award of a contract exceeding \$100,000, the remainder of the solicitation package must be prepared in its entirety. No preference may be claimed after bids are opened.

The only safe harbors for determining whether Section 3 requirements have been met are the following:

- A. The 30% new hiring of Section 3 Residents goal;
- B. The 10% Section 3 Business Concern Contracting for Building Trades Work goal; and,
- C. The 3% Section 3 Business Concern Contracting for "Other" Covered Contracts goal.

As DCA does not execute final funding contracts, it is reliant upon the compliance of its recipient, sub-recipient, and/or contractor(s) to execute DCA's Section 3 initiatives. If the goals above cannot be met by the recipient, sub-recipient, and/or contractor, the recipient, sub-recipient, and/or contractor must provide documentation explaining why those numerical goals could not be met, including a description of any actions taken, any impediments encountered, and any other economic opportunities provided (See Part VII – Other Economic Opportunities). This documentation must be submitted to DCA for review and approval. DCA will take each recipient or sub-recipient's explanation into consideration when making the determination of compliance.

In addition to the notice requirements for both hiring and contracting, other examples of activities to demonstrate effort to comply with the Safe Harbor Limits are listed in the appendix to part 135 of the Code of Federal Regulations—24 CFR Part 135 and include:

1. Distributing or posting flyers advertising positions to be filled;
2. Contacting the local government or housing authority for a list of residents who have expressed interest in Section 3 employment;
3. Holding job informational meetings for residents, contractors, etc...;
4. Contacting agencies administering HUD YouthBuild programs and requesting their assistance in recruiting HUD YouthBuild program participants for training and employment positions.

PART VI. PREFERENCES AND ELIGIBILITY:

Note: All persons who are recipients of housing assistance from the government are Section 3 residents. Residents of HUD assisted housing are top priority Section 3 residents (Tier One). HUD assisted housing includes: (A) public housing, (B) Housing Choice Voucher holders, (C) substance abuse rehabilitation housing, (D) domestic violence shelters, (E) transitional housing facilities, (F) homeless shelters, and (G) veterans housing. The businesses owned by Section 3 residents (ROBs) are top priority business concerns (Tier One). When employment or contracting opportunities are offered and all requirements are met and remain equal, HUD assisted housing residents and ROBs within the area of the project shall be provided preference over other Section 3 residents/business concerns and non-Section 3 residents/business concerns.

- A) Regarding the hiring of Section 3 residents, preference, in the following order, shall be given to those residents who live:
1. In HUD assisted housing.
 2. At the site where the work is being performed.
 3. In the city where the work is being performed.
 4. In the county where the work is being performed.
- B) Regarding the contracting opportunities for Section 3 business concerns, preference shall be given to business concerns, in the order of preference described in Section A of Part VI, Preference and Eligibility, meeting these definitions and in this order:
1. Resident Owned Businesses (ROBs) owned and operated at 51% by Section 3 Residents.
 2. Businesses that employ Section 3 residents at no less than 30% of the contractors aggregate full time staff.

3. Contractors that at the time of bid show evidence (meaning the specific name and preference met) of their intent to award no less than 25% of their total award to Section 3 business concerns.
- C) A Section 3 resident seeking employment must fulfill the requirements of the sought position and, if asked, must provide evidence of their Section 3 status (e.g., proof of residency in public housing development; evidence of participation in a HUD YouthBuild program operated in the metropolitan area (or non-metropolitan county) where the Section 3 covered assistance is spent; evidence that the individual resides in the Section 3 area and is a low or very low-income person as defined in Section 3(b) (2) of the U.S. Housing Act of 1937). Recipient agencies may choose to allow prospective Section 3 residents to self-certify their eligibility. Any self-certification should include a statement of penalty for falsifying information. A Section 3 Business Concern seeking to win a contract must fulfill the requirements of the contract and, if asked, provide evidence of their Section 3 status.

PART VII. OTHER ECONOMIC OPPORTUNITIES:

The Other Economic Opportunities provision may only be used when a contractor, recipient, or sub-recipient desires to claim a preference under Part VI and cannot comply with the hiring or subcontracting goals set forth in the Preference Tier structure, or, based on observed special needs, has concluded that providing Other Economic Opportunities will be a greater benefit to Section 3 Residents or Businesses. Whenever the Other Economic Opportunities provision is employed, the actions must equal or exceed 3% of the total contract value including all labor and material costs as well as any change orders to these costs.

Firms that will provide other economic opportunities will be responsible for soliciting and contracting a qualified firm/individual experienced in providing a Georgia Department of Labor Approved training curriculum consistent with Section 3 requirements of 135.11 in the area of Section 3 resident training in the following areas:

- Employment Readiness and Professional Development
- Section 3 Small Business Concern Development Training
- Computer Literacy and Data Entry Skills Training
- Employment Skills Training (Any Viable Employment Field)
- Other training curriculum approved by DCA

The acceptability of these efforts will be determined by DCA in the case of a recipient, sub-recipient, and by the recipient or sub-recipient in the case of a contractor, or in cases of a complaint, by HUD.

PART VIII. DCA SECTION 3 RESPONSIBILITIES:

Refer to the Georgia Department of Community Affairs Section 3 Hiring Policy available upon request to the Georgia Department of Community Affairs Human Resources Department.

PART IX. COMPLAINTS AND COMPLIANCE:

Any Section 3 resident or business concern that feels that the Section 3 regulations were not complied with may file a complaint directly to the Assistant Secretary for Fair Housing and Equal Opportunity at the following address (or as otherwise directed by HUD):

Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Regional Field Office
40 Marietta Street, NW
Atlanta, Georgia 30303

The complaint must be in writing and be received within 180 days from the date of the action upon which the complaint is based. It should include the complainant's name and address, the recipient, sub-recipient's or contractor's name and address, and a description of the acts in question. The complainant will receive a response from HUD within 10 days in which further investigation will be explained.

PART X. DCA STANDARD SECTION 3 OPERATING PROCEDURES

Policy Effective Date: _____, 20__ Procedural Change Date: _____, 20__

Procedure Title: Section 3

This operating procedure is tied to the Operating Policy on Section 3 designed to achieve and maintain compliance with the HUD Act of 1968 revised in 1992 and in 1994.

The procedures contained within are relative to the Section 3 daily operations in:

- Hiring
- Procurement
- Contracting
- Compliance Management
- Solicitation Package and Certification Documents

Section 1 – Recipient, Sub-Recipients and Contractors: Hiring

This procedure encompasses all full time employment types including, long term, short term, temporary and special assignments. In the process of seeking new employees for the recipient,

sub-recipient, contractor, or subcontractor, the following procedures should be followed in an effort to create as many employment opportunities for Tier 1 HUD direct beneficiaries:

Step 1: Post the position in community sources that are generally available to low income residents and the general public. It is required that a minimum of three (3) of the following listed sources will be exercised at least once prior to extending an offer of employment to anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e., Department of Labor)
- F) Local office of the Georgia Division of Family and Children Services
- G) Local office of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

Step 2: Be certain to list in the notice that the position is a “**Section 3 Covered Position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply.**”

Step 3: In reviewing all applicants, be certain to first select candidates that best fit the position requirements. If a Tier I resident is identified as a qualified candidate, all things being equal with others in consideration, a preference for employment should be given to the Section 3 Resident based on the Policy order established in Part VI – Preferences and Eligibility.

Step 4: In cases where a recipient, sub-recipient or contractor establishes a relationship and requirement with any temporary employment agency contractor, the temporary employment agency contractor or temporary employment agency must require placements to its recipient, sub-recipient or contractors to complete the Self Certification form clarifying their qualifications as a qualified Section 3 Resident. Any person certifying as a qualified Section 3 Resident must be given Preference for any Section 3 covered assignment with the recipient, sub-recipient or contractor providing they meet all other position requirements.

Section 2 –Recipient, Sub-Recipients and Contractors: Procurement

Whenever a contract opportunity is solicited, these steps must be followed in order to comply with DCA’s Section 3 Policy.

ROB Verification: Whenever ROB status is sought, the recipient, sub-recipient or contractor staff shall request address and ownership verification of the 51% Owner/Operator rule as stated in

the HUD Act of 1968. Use of the **"Section 3 Self-Certification Form"** attached to this policy is an acceptable statement of address and business data, when presented along with all other required incorporation documents, including any Letter of Issuance of a Federal Employer Identification Number (FEIN) and state Articles of Incorporation.

Step 1: *This step is only applicable when a public housing authority is involved in the transaction.* During the development process of any solicitation or work project, there should be a determination as to whether or not the work can be and/or should be isolated to Resident Owned Businesses (ROB's) under the **24 CFR Part 963.12 Alternative Procurement Method**. If so, then Steps 2-8 should be followed with respect for **ROB's ONLY**. Keep in mind, a qualified ROB can be one that is a Joint Venture Partnership where a non-ROB can participate at no more than 49% ownership, operations and profit. A statement where both parties have committed to these terms is required as validation of ROB status.

Step 2: As a direct method of encouraging greater participation and election of Section 3 Preference by contractors, DCA requires that all recipient, sub-recipient, and contractors conduct at least one pre-bid meeting or workshop to facilitate the meeting of contractors (large and small) in hopes that more opportunities will be afforded all parties in covered DCA funded contracts. These steps must be in compliance with State of Georgia procurement laws. Where a conflict occurs, the recipient, sub-recipient, or contractor should not conduct such acts that would constitute a violation.

Step 3: Post the contract opportunity in community sources that are generally available to Section 3 Businesses, low income residents and the general public. It is required that a minimum of three (3) of the listed sources will be exercised at least once prior to entering into a contract with anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e. Georgia Department of Labor)
- F) Local Office of the Georgia Division of Family and Children Services
- G) Local Offices of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

DCA recommends that all such posting periods shall last at least one calendar week.

Step 4: The recipient, sub-recipient or contractor must check the HUD Section 3 Business Registry to determine if there are any Section 3 businesses in the County where the work will be performed. If there are Section 3 businesses in the County that may be able to perform the work, the recipient,

sub-recipient or contractor must provide a copy of the contracting opportunity(ies) (e.g., bid notices) to the Section 3 businesses. See the HUD Section 3 Business Registry at: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.

Step 5: All ads must include a notice that the contract opportunity is a **"Section 3 Covered Contract and that Section 3 Business Concerns are encouraged to apply."**

Step 6: All awardees must include the attached **"Solicitation Package"** for recipient, sub-recipients and contractors to complete and return with their applications/responses. Any application/response claiming a preference must include the satisfactorily completed *Section 3 Self-Certification and Action Plan* and the *Section 3 Business Concern Self Certification*.

Step 7: In reviewing the solicitation responses, any contractors that claim a preference and are identified as qualified Section 3 Concerns should be reviewed and if legitimate, granted a Preference in contracting, all other things being equal.

Step 8: When procurements require point scores as part of the award process, the recipient, sub-recipient or contractor shall ensure that a method of providing Preference exists based on the solicitation-criteria to secure the most qualified firm or individual for the contract. Under no circumstances shall a contract be awarded to a firm (Section 3 or Non-Section 3) if they fail to meet minimum standards or do not score high enough to surpass "competitive range" scoring. **Section 3 Preference only is to be considered after all other relative quantitative and qualitative factors have been scored and weighted.**

Step 9: All solicitations exceeding \$100,000 shall require that applicants/respondents prior to award convey prior compliance with Section 3 on any HUD funded contract. **If a contractor has not complied on any HUD funded contract effective on or after January 1, 2014, they should be considered non-responsive.**

Step 10: All solicitations exceeding \$100,000 must include a certification of prior compliance with HUD Section 3 for all HUD funded contracts effective on or after January 1, 2014 as a requirement for award. See the attached form titled: "Previous Compliance Certification."

Section 3 – Recipient, Sub-Recipients and Contractors: Contracting

Step 1: In addition to the required Section 3 contract language provided in 24 CFR §135.38, the following language is to be added to all new contracts effective immediately:

"All contractors claiming a Preference in contracting by meeting any of the three qualifications including: a Resident Owned Business, Hiring/Employing 30% of New Hires, and/or sub-contracting at least 25% of their total award to a Section 3 Concern, shall maintain that status throughout the life of the contract. Failure to meet this requirement will result in penalties up to and including contract termination."

Step 2: Any recipient, sub-recipient or contractor claiming a Preference **must be in compliance prior to the issuance of a notice to proceed** by DCA, recipient, sub-recipient, or contractor based on the policies established for the applicable DCA funding program.

Step 3: The sub-recipient or contractor must maintain compliance. If at any time a recipient, sub-recipient or contractor fails to bring the contract into compliance, DCA, recipient, the sub-recipient, or contractor must withhold all future payments until the contract is in compliance or until other penalties have been levied as stated below.

DCA, the recipient, sub-recipient, or the contractor shall execute these remedies to achieve compliance in this order:

- A. Based on the first observation or report of non-compliance with Section 3, the recipient, sub-recipient or contractor will be sent an e-mail by the compliance manager notifying them of their non-compliance issue. The recipient, sub-recipient or contractor will have until the next payroll or 10 business days, whichever is less, to bring the contract into compliance and/or justify in writing why they cannot meet compliance requirements.
- B. DCA, the recipient, sub-recipient or contractor must render a response to the violating party within 10 business days of receipt of the violating party's letter of reason for non-compliance. If DCA, the recipient, sub-recipient, or the contractor deems the reason to be unacceptable, at its option, DCA, the recipient, sub-recipient, or the contractor can extend the response period one time for up to 5 business days to allow the violating party to identify and secure other compliance options.
- C. If the violating party fails to take any corrective action to bring the contract into compliance within the allotted time, or DCA, the recipient, sub-recipient, or the contractor rejects any of the corrective plans and justifications for non-compliance, DCA, the recipient, sub-recipient, or the contractor will either terminate the contract immediately or impose liquidated damages equal to \$100 a day for every day out of compliance. At DCA's determination, any liquidated damages received must be paid to the recipient, sub-recipient or DCA, at DCA's determination, and be used to promote economic opportunities for Section 3 Residents and Business Concerns.
- D. .

DCA, the recipient, sub-recipient, or the contractor will hold **all funds due to the violating party until such time that a financial workout is completed.**

Additionally the violating party may be banned by DCA, the recipient, the sub-recipient, and the contractor on future HUD funded projects.

Mandatory Section 3 Solicitation Package

This mandatory solicitation package has been developed in accordance with DCA's Section 3 Policy for Covered HUD Funded Activities. DCA encourages all recipients, sub-recipients, contractors, and sub-contractors to review this policy prior to completion of the solicitation package. For those solicitations that meet the applicable Section 3 thresholds, this package must be returned in accordance with the applicable instructions to the contracting entity prior to award **or at the time of submission of a bid/proposal in order to claim a Section 3 preference.** The Section 3 Clause, required forms, and instructions are included in this package.

To be considered for a contract award exceeding \$100,000, the entire solicitation package must be satisfactorily completed and submitted prior to award. In order to claim a preference for a contract award exceeding \$100,000, the Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification portions of the solicitation package must be satisfactorily completed and submitted at the time of submission of a bid/proposal.

For Section 3 Covered Assistance of \$100,000 or less, the solicitation package must be made available to bidders/offerors in accordance with DCA's Section 3 Policy; however, bidders/offerors are not required to submit the solicitation package unless a preference is being claimed. In this case, only the Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification must be completed at the time of submission of a bid/proposal

Any bid/proposal claiming a preference must include the completed and signed Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification, and be submitted by the bid/proposal deadline.

The following Section 3 forms must be completed and returned as instructed:

- Section 3 Self Certification and Action Plan
- Previous Section 3 Compliance Certification
- Assurance of Compliance Certification

Additionally, if the contractor is claiming certification as a 51% Resident Owned Business (ROB) or is certifying as a 30% employer, the Resident Self-Certification and Skills Data Form must be returned for all employees who meet the low- or very low-income requirement as well as the appropriate Section 3 Business Certification.

Section 3 Solicitation Overview and Instructions for Contractors

The DCA Section 3 Policy requires that, when the **Section 3 regulation is triggered**, every effort within the contractor's disposal must be made, to the greatest extent feasible, to offer all available employment and contracting opportunities to Section 3 residents and Section 3 businesses based on the compliance methods below.

All Contracts and All Contractors must meet Section 3 compliance by:

- A. Giving notice of any and all opportunities for employment and contracting to residents of the local Public Housing Authority (PHA), and other low and very low income area residents and businesses, by posting the opportunity in community sources generally available to low income residents and the general public. Exercising a **minimum of three (3)** of the following listed sources must be completed prior to offering employment to anyone not covered by Section 3 requirements:
 1. The local community newspaper
 2. The most widely distributed newspaper
 3. Company or agency website
 4. The management office of the local housing authority/homeless service agency/local low income housing community
 5. Local Workforce Board (i.e. Department of Labor)
 6. Local office of the Georgia Division of Family and Children Services
 7. Dodge Room <http://www.construction.com/dodge/dodge.asp>
 8. Other locations as approved by DCA
- B. The recipient, sub-recipient or contractor must check the HUD Section 3 Business Registry to determine if there are any Section 3 businesses in the County where the work will be performed. If there are Section 3 businesses in the County that may be able to perform the work, the recipient, sub-recipient or contractor must provide a copy of the contracting opportunity(ies) (e.g., bid notices) to the Section 3 businesses. See the HUD Section 3 Business Registry at: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.
- C. Clearly stating in notices that the position is a "Section 3 covered position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply."
- D. Placing the Section 3 Clause provided in Appendix A in ALL solicitations.
- E. When possible, other activities may be done to demonstrate effort to comply with the Safe Harbor Limits. These other efforts are listed in the appendix to part 135 of the Code of Federal Regulations—24 CFR Part 135 and include:
 1. Distributing or posting flyers advertising positions to be filled;

2. Contacting the local government or housing authority for a list of residents who have expressed interest in Section 3 employment;
 3. Holding job informational meetings for residents, contractors, etc...;
 4. Contacting agencies administering HUD YouthBuild programs and requesting their assistance in recruiting HUD YouthBuild program participants for training and employment positions.
- F. Linking residents or businesses to local resources that may be available to help prepare them for applying for and achieving the opportunity.
- G. Working with DCA, the recipient, sub-recipient or contractor as applicable in developing a communication and follow up process to track and report all Section 3 applications and hiring activities to ensure the reporting of compliance efforts, and that contracting and sub-contracting are accurate. Provide preference in hiring and contracting to Section 3 applicants and contractors when employment or contracting opportunities are offered and all requirements are met and remain equal. Contractors must:
1. Provide this package to all sub-contractors when soliciting bids for all contracts or sub-contracts;
 2. Meet all the same processes in A-E; and
 3. Provide Preference to all sub-contractors meeting the definitions as stated in Section VI of DCA's Section 3 Policy for Covered HUD Funded Activities.
- H. In order for Preference as a Section 3 Contractor to be factored into the award decision, all elements of the solicitation criteria must be equal between contracts. This means price and all other factors must be equal. Then the contractors that elect Preference on the Certification and Action Plan form that meet that Preference criterion will be provided Preference in the award of the contract as provided in Part VI., Preferences and Eligibility of DCA's Section 3 Policy for Covered HUD Funded Activities.

Example:

Bill's electrical and Sue's Electrical bid a job where the housing authority has a budget of \$500,000. Bill bids \$480,000 and elects a Preference as a Section 3 business concern because he qualifies as a 51% Resident Owned Business. Sue bids \$450,000 but does not elect any Preference. Both companies met all the other requirements. Sue will be awarded the contract because Bill's bid was higher.

Important items to remember about receiving Preferences in contract award:

All contractors and/or subcontractors that elect a Preference and are awarded a contract must be in compliance prior to the issuance of a Notice to Proceed by DCA, the recipient, sub-recipient, or the contractor based on the policies established for the applicable DCA funding program. The contractor and/or subcontractor must maintain the elected Preference standard during the entire contract or risk having the contract terminated for failure to comply. **See Appendix B for further details.**

When a contractor and/or subcontractor that elected a Preference is unable to identify a Section 3 resident or a Section 3 business for employment or contracting opportunities, the contractor then **must** offer employment related training to the Section 3 residents in the county. The training must be provided according to Part VII – Other Economic Opportunities in DCA's Section 3 Policy.

Appendix A

Section 3 Clause

Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of Section 3 apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Appendix B

Section 3 Contract Non-Compliance Cure /Termination Processes

This language is a component of contract compliance with the work to which you are responding in this solicitation. The full requirements are provided in the Section 3 Clause found elsewhere in this package and in DCA's Section 3 Policy for Covered HUD Funded Activities.

Any recipient, sub-recipient or contractor claiming Preference **must be in compliance prior to issuance of a notice to proceed by DCA, recipient, sub-recipient, or contractor based on the policies established for the applicable DCA funding program. This preference can be met by any of the three qualifications:**

1. Resident Owned Businesses (ROBs) owned and operated at 51% by Section 3 Residents.
2. Businesses that employ Section 3 residents at no less than 30% of the contractors aggregate full time staff.
3. Contractors that at the time of bid show evidence (meaning the specific name and preference met) of their intent to award no less than 25% of their total award to Section 3 business concerns.

The recipient, sub-recipient or contractor must maintain compliance throughout the life of the contract. The contractor understands and agrees that a compliance management firm may be used to conduct routine and certified payroll reviews to ensure compliance. The Contractor agrees to provide the payroll data in an Excel or Word format each time the payroll is processed throughout the contract.

Failure to meet the Section 3 requirements will result in penalties up to and including contract termination. Any contractor triggering the regulation by doing any hiring or contracting once they are awarded the contract through execution must comply with the Section 3 requirements by executing the efforts on their Certification and Action Plan in accordance with DCA's Section 3 Policy.

DCA, the recipient, sub-recipient or contractor shall execute these remedies to achieve compliance in this order:

NON-COMPLIANCE CURE PROCESS

- A. Based on the first observation or report of non-compliance with Section 3, the recipient, sub-recipient or contractor will be sent an e-mail by the compliance manager notifying them of their non-compliance issue. The recipient, sub-recipient or contractor will have until the next payroll or 10 business days, whichever is less, to bring the contract into compliance and/or justify in writing why they cannot meet compliance requirements.
- B. DCA, the recipient, sub-recipient or contractor must render a response to the violating party within 10 business days of receipt of the violating party's letter of reason for non-compliance. If DCA, the recipient, sub-recipient, or the contractor deems the reason to

be unacceptable, at its option, DCA, the recipient, sub-recipient, or the contractor can extend the response period one time for up to 5 business days to allow the violating party to identify and secure other compliance options.

NON-COMPLIANCE TERMINATION PROCESS

If the violating party fails to take any corrective action to bring the contract into compliance within the allotted time, or DCA, the recipient, sub-recipient, or the contractor rejects any of the corrective plans and justifications for non-compliance, DCA, the recipient, sub-recipient, or the contractor will either terminate the contract immediately or impose liquidated damages equal to \$100 a day for every day out of compliance. At DCA's determination, any liquidated damages received must be paid to the recipient, sub-recipient or DCA, at DCA's determination, and be used to promote economic opportunities for Section 3 Residents and Business Concerns.

DCA, the recipient, sub-recipient, or the contractor will hold **all funds due to the violating party until such time that a financial workout is completed.**

Additionally the violating party may be banned by DCA, the recipient, sub-recipient, and the contractor on future HUD funded projects.

Appendix C
Section 3 Forms

Georgia Department of Community Affairs

Required Submittal - Section 3 Self-Certification and Action Plan

All firms and individuals intending to do business with DCA, its recipients, sub-recipients and contractors **MUST** complete and submit this Action Plan and submit it with the bid, offer, or proposal in order to claim a preference on any contract or prior to award of a contract exceeding \$100,000 if no preference is claimed. ***For contracts exceeding \$100,000, this document (signed, and notarized) must be satisfactorily completed to be eligible for award.***

Business Name:																						
D.B.A. (if different from above):																						
Address:	City:	State/Zip:																				
Business Phone: ()	Fax: ()																					
E-Mail:	Business Website:																					
Federal Employer Identification Number:	Owner Social Security Number (if no EIN):																					
Contact Person & Title:	Contact Phone:																					
<p>Trade Description:</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> Carpentry</td> <td><input type="checkbox"/> Heating (HVAC)</td> <td><input type="checkbox"/> Electrical</td> <td><input type="checkbox"/> Painting</td> </tr> <tr> <td><input type="checkbox"/> Masonry Restoration</td> <td><input type="checkbox"/> Asbestos</td> <td><input type="checkbox"/> Plumbing</td> <td><input type="checkbox"/> Roofing</td> </tr> <tr> <td><input type="checkbox"/> Lead (Abatement)</td> <td><input type="checkbox"/> General Contractor</td> <td><input type="checkbox"/> Concrete</td> <td><input type="checkbox"/> Ironwork</td> </tr> <tr> <td><input type="checkbox"/> Carpet/Flooring</td> <td><input type="checkbox"/> Rubbish Removal/Hauling</td> <td><input type="checkbox"/> Appraisal Services</td> <td><input type="checkbox"/> Landscaping</td> </tr> <tr> <td><input type="checkbox"/> Demolition</td> <td><input type="checkbox"/> Other:</td> <td colspan="2"></td> </tr> </table>			<input type="checkbox"/> Carpentry	<input type="checkbox"/> Heating (HVAC)	<input type="checkbox"/> Electrical	<input type="checkbox"/> Painting	<input type="checkbox"/> Masonry Restoration	<input type="checkbox"/> Asbestos	<input type="checkbox"/> Plumbing	<input type="checkbox"/> Roofing	<input type="checkbox"/> Lead (Abatement)	<input type="checkbox"/> General Contractor	<input type="checkbox"/> Concrete	<input type="checkbox"/> Ironwork	<input type="checkbox"/> Carpet/Flooring	<input type="checkbox"/> Rubbish Removal/Hauling	<input type="checkbox"/> Appraisal Services	<input type="checkbox"/> Landscaping	<input type="checkbox"/> Demolition	<input type="checkbox"/> Other:		
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<input type="checkbox"/> Masonry Restoration	<input type="checkbox"/> Asbestos	<input type="checkbox"/> Plumbing	<input type="checkbox"/> Roofing																			
<input type="checkbox"/> Lead (Abatement)	<input type="checkbox"/> General Contractor	<input type="checkbox"/> Concrete	<input type="checkbox"/> Ironwork																			
<input type="checkbox"/> Carpet/Flooring	<input type="checkbox"/> Rubbish Removal/Hauling	<input type="checkbox"/> Appraisal Services	<input type="checkbox"/> Landscaping																			
<input type="checkbox"/> Demolition	<input type="checkbox"/> Other:																					
Date Business was established (MM/DD/YYYY): _____																						
<p>Type of Business (Check One):</p> <table style="width: 100%;"> <tr> <td><input type="checkbox"/> Corporation</td> <td><input type="checkbox"/> Partnership</td> <td><input type="checkbox"/> Sole Proprietorship</td> </tr> <tr> <td><input type="checkbox"/> Limited Liability Corporation (LLC)</td> <td><input type="checkbox"/> Limited Liability Partnership (LLP)</td> <td><input type="checkbox"/> Joint Venture</td> </tr> <tr> <td colspan="3"><input type="checkbox"/> Other (Describe): _____</td> </tr> </table>			<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Limited Liability Corporation (LLC)	<input type="checkbox"/> Limited Liability Partnership (LLP)	<input type="checkbox"/> Joint Venture	<input type="checkbox"/> Other (Describe): _____													
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Sole Proprietorship																				
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<input type="checkbox"/> Other (Describe): _____																						
<p>Number of employees: Full-time: _____ Part-time: _____ Contract: _____ Total: _____</p>																						
<p>Section 3 employees: Full-time: _____ Part-time: _____ Contract: _____ Total: _____</p>																						

I am Certifying as a Section 3 Business Concern and requesting Preference accordingly (Select only One Option):

Option 1

- ☐ A business claiming status as a Section 3 Resident-Owned Business Concern (ROB) entity:

_____ Initial here to confirm selection of this option

Option 2

- ☐ A business claiming Section 3 status, because at least 30% of the existing or newly hired workforce for this specific contract will be Section 3 residents throughout the entire contract period. If a Prime or General Contractor is electing this option, the 30% employment requirement will be for the entire project including all the sub-contractors' employees:

Check all methods you will employ to secure Section 3 Residents/Persons

Posting the position in community sources that are generally available to low income residents and the general public is a standard requirement. **Check at least three (3) methods you will employ:**

- ☐ The local community newspaper
- ☐ The most widely distributed newspaper
- ☐ Company or agency website
- ☐ The management office of the local housing authority, or homeless service agency, or local low income housing community
- ☐ Local Workforce Board (i.e., Department of Labor)
- ☐ Local office of the Georgia Division of Family and Children Services
- ☐ Local office of the Georgia Department of Public Health
- ☐ Dodge Room <http://www.construction.com/dodge/dodge.asp>
- ☐ Other locations identified below and subject to DCA approval:

_____ Initial here to confirm selection of this option

I anticipate my total number of employees for this contract to be _____ and _____ will be qualified Section 3 Residents/persons.

Option 3

- ☐ A business claiming Section 3 status by subcontracting 25% of the dollar award to qualified Section 3 Business:

Attach a list of intended subcontract Section 3 business(es) with subcontract amount.

Attach certification & all supporting documentation for each planned subcontract Section 3 Business.

_____ Initial here to confirm selection of this option

I am NOT Requesting Preference under Section 3:

- ☐ I am NOT certifying as a qualified Section 3 Business Concern and I am not requesting a preference. However if I do trigger the regulation by doing any sub-contracting or hiring, I will comply by meeting all requirements of DCA's Section 3 policy and am committing to do the outreach as specified below.

Check all methods you will employ to secure Section 3 Residents/Businesses

Posting the position/contract opportunity in community sources that are generally available to low income residents and Section 3 Businesses and the general public is a standard requirement. **Check at least three (3) methods you will employ:**

- ☐ The local community newspaper
- ☐ The most widely distributed newspaper
- ☐ Company or agency website
- ☐ The management office of the local housing authority, or homeless service agency, or local low income housing community
- ☐ Local Workforce Board (i.e., Department of Labor)
- ☐ Local office of the Georgia Division of Family and Children Services
- ☐ Local office of the Georgia Department of Public Health
- ☐ Dodge Room <http://www.construction.com/dodge/dodge.asp>
- ☐ Other locations identified below and subject to DCA approval:

_____ Initial here to confirm selection of this option

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Notarial Affidavit

Sworn to and subscribed before me this _____ day of _____, 20____.

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration Date: _____

(Notarial Seal)

Required Submittal - Assurance of Compliance Certification
Section 3 Action Plan
Housing and Urban Development Act of 1968
(12 U.S.C. 1701 U)

Contract/Solicitation Name or Number: _____

DCA Funding

Program: _____

Entity Receiving DCA Funding Award: _____

Purpose: To ensure that regulations promulgated under 24 CFR Part 135 Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects and the Section 3 Policy of DCA, its recipients, sub-recipients and contractors to the greatest extent feasible is adhered to, and to serve as the "assurance of compliance" certification and action plan as required in the bid documents, supplemental general conditions, and required forms for the contract for any HUD work funded by DCA.

Description of the project's work detail: The project work will be as listed in the final scope of work in the contract with DCA, its recipients, sub-recipients and contractors including any change orders. List all known subcontractors below:

Subcontractor(s): _____

Subcontractor(s): _____

Subcontractor(s): _____

Subcontractor(s): _____

Subcontractor(s): _____

Subcontractor(s): _____

Subcontractor(s): _____

Subcontractor(s): _____

Use an additional sheet if required.

Note: If subcontractors are unknown at this time, print UNKNOWN on the line above. Also, the contractor must notify DCA or recipient or sub-recipient if subcontractors are added or changed during the contract. Any changes to this certification requires a resubmission of this form to DCA or recipient or sub-recipient.

Preliminary Statement for Work Force Needs:

DCA intends to meet Section 3 compliance at the highest level and it is our intent to identify any short-term and long-term employment or contracting opportunities for qualified Section 3 persons and Business Concerns during the course of the contract funded by DCA via its recipients or sub-recipients and contractors. Please list the status of all planned employment positions and opportunities for this contract. **Preference for all opportunities must be given to low and very low-income residents if they qualify. If awarded a contract, regardless of whether your firm has elected a preference, you are required to provide a list of your aggregate workforce on this project. Any changes to that workforce during the project will constitute NEW hires. You must notify DCA, its recipient, sub-recipient or contractor (respectively) overseeing your contract of any new hire opportunities that arise during the life of your contract. The anticipated workforce list may be provided on a separate sheet or in a different format.**

<u>List All Employees</u>	<u>Date Hired</u>	<u>Section 3 Resident (Yes/No)</u>	<u>Job Title/Trade</u>	<u>Salary Range</u>
Name: Address: City, ZIP:				
Name: Address: City, Zip Code:				
Name: Address: City, Zip Code:				
Name: Address: City, Zip Code:				

Use additional pages as needed.

"To the Greatest Extent Feasible":

The Contractor has identified ____ # of **OPEN** positions with respect to this contract. The positions are filled by the _____ (Position title) of the Contractor.

Should the scope of work or duties of the contractor change to a degree requiring a modification of the work force needs, the contractor shall put forth a reasonable effort to fill vacant positions with eligible Section 3 residents.

Documentation of "To the Greatest Extent Feasible":

The contractor will work with DCA, its recipients, sub-recipients, and contractors staff to notify residents of any opportunities afforded under the contract. The contractor will partner with DCA, its recipients, sub-recipients, and contractors by giving preference of any employment opportunities to the Section 3 persons or businesses.

The contractor shall recruit or attempt to recruit from the Section 3 area the necessary number of low-income and very low-income residents and Section 3 businesses, as applicable. The contractor must also document their recruiting efforts and any impediments to compliance with DCA's Section 3 policy and the requirements of this solicitation package. This documentation must be submitted to the recipient or sub-recipient.

1. DCA, its sub-recipients and contractors shall: Maintain a list of all low-income area residents who have applied, either on their own or from referral from any source, and employ such person if otherwise eligible and if a trainee vacancy exists.
2. Conduct solicitation in accordance with DCA's Section 3 policy and the requirements outlined in the solicitation package.

The contractor shall review all employment applications and determine if low-income and very low-income residents or Section 3 businesses meet minimum hiring or contracting qualifications. If these applicants meet such minimum qualifications, but are not hired due to lack of employment opportunities or for other reasons, they will be placed on a priority list and offered positions/contracts upon the occurrence of the first available appropriate opening.

Utilization of Section 3 Businesses Located Within the County:

The recipient, sub-recipient or contractor does ____ does not ____ intend to subcontract any of the work identified in the scope of work cited in the bid specifications, scope of work or General Conditions. Should the scope of work or needs of the contractor change, the contractor shall, to the greatest extent feasible, assure that subcontracts be awarded to business concerns within the Section 3 covered area, or to business concerns owned in the substantial part (at least 51%) by persons residing in the Section 3 covered area.

Record Keeping:

The recipient, sub-recipient, contractor or subcontractor, as applicable, shall maintain on file all records related to employment and job training of low-income and very low-income residents or other such records, advertisements, legal notices, brochures, flyers, publications, assurances of compliance from sub-contractors, etc., in connection with this contract. If a report is needed in the future, the recipient,

sub-recipient, contractor or subcontractor, as applicable, agrees to provide all records upon request. The contractor shall, upon request, provide such records or copies of records to HUD, DCA, their recipients, sub-recipients, contractors, staff, or agents. Records shall be maintained for at least three (3) years after the close of the contract.

Reports:

The recipient, sub-recipient or contractor shall provide reports as required in connection with the contractor specifications. All certified and regular payrolls shall clearly detail which employees qualify under Section 3.

Certification:

The recipient, sub-recipient or contractor will certify that any vacant employment positions, including training positions that filled:

- 1) After the recipient, sub-recipient or contractor is selected but before the contract is executed, and
- 2) With persons other than those to who the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the subcontractor's obligations under 24 CFR Part 135.

Grievance and Compliance:

The recipient, sub-recipient, contractor or subcontractor hereby acknowledges that they understand that any low-income and very low-income resident of the project area, for him/her or as representatives of persons similarly situated, seeking employment or job training opportunities in the project area, or any eligible business concerns seeking contract opportunities may file a grievance if efforts to the greatest extent feasible were not executed. The grievance must be filed with HUD not later than one hundred eighty (180) calendar days from the date of the action (or omission) upon which the grievance is based.

I attest that the information on the preceding pages is true and correct.

Signature

Date

Print Name

Title

**RESIDENT SECTION 3 SELF-CERTIFICATION
AND SKILLS DATA FORM**



The purpose of this form is to comply with HUD Section 3 administration and certification regulations.

Certification for Section 3 Residents or other Low-Income Persons Seeking Employment, Training or Contracting

I, _____, am a legal resident of the United States and meet the income eligibility and federal guidelines for a Section 3 Resident as defined within this Certification.

My home address is: _____
Must be a **Street** address not a P O Box # _____ Apt Number _____

City _____ State _____ Zip _____ Home # _____ Cell # _____

County of Residence _____

Graduated High School or GED (month/year): _____ I Read and Speak English Fluently: Yes or No

Attended College, Trade, or Technical School: Yes or No Graduated? Yes or No Year Graduated: _____

Check the Skills, Trades, and/or Professions in which you have been employed or contracted to do for others:

- | | | | |
|--|--|--|---|
| <input type="checkbox"/> Drywall Hanging | <input type="checkbox"/> Drywall Finishing | <input type="checkbox"/> Interior Painting | <input type="checkbox"/> Framing |
| <input type="checkbox"/> HVAC | <input type="checkbox"/> Electrical | <input type="checkbox"/> Interior Plumbing | <input type="checkbox"/> Exterior Plumbing |
| <input type="checkbox"/> Siding | <input type="checkbox"/> Cabinet Hanging | <input type="checkbox"/> Door Replacement | <input type="checkbox"/> Trim/Carpentry |
| <input type="checkbox"/> Stucco | <input type="checkbox"/> Window/Door Replacement | <input type="checkbox"/> Construction Cleaning | <input type="checkbox"/> Exterior Framing |
| <input type="checkbox"/> Data Entry | <input type="checkbox"/> Receptionist | <input type="checkbox"/> Sales | <input type="checkbox"/> Telephone Customer Service |
| <input type="checkbox"/> Administrative | <input type="checkbox"/> Teaching/Training | <input type="checkbox"/> Personal Care Aide | <input type="checkbox"/> Landscaping |
| <input type="checkbox"/> CDL License | <input type="checkbox"/> Roofing | <input type="checkbox"/> Concrete/Asphalt Work | <input type="checkbox"/> Heavy Equipment Operator |
| <input type="checkbox"/> Fencing | <input type="checkbox"/> Metal/Steel Work | <input type="checkbox"/> Welding | |
| <input type="checkbox"/> Other | | <input type="checkbox"/> Other | |

I am certifying as a Section 3 Resident: ☐ **Person seeking Training** or ☐ **Person seeking employment**

(Check all that apply):

☐ I am a public housing or section 8 Leaseholder ☐ I live in the service area

My total annual household income is \$ _____. There are a total of _____ people living in my household.

I certify that all of the information given on this Certification is true and correct. If found to be inaccurate, I understand that I may be disqualified as an applicant and/or a certified Section 3 individual which may be grounds for termination of training, employment, or contracts that resulted from this certification. I attest under penalty of perjury that my total household income annually, based on my total household size as listed above is at or below the income amount for that specific size at the time of this document is being signed and notarized. I understand that proof of this statement may be requested in the future.

Signature _____

Date _____

Printed Name: _____

Purpose:

The purpose of Section 3 of the Housing and Urban Development of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic and business opportunities generated by HUD Financial Assistance shall be directed to the Authority Residents and other low- and very low-income persons, particularly those who are recipients of government housing assistance and to business concerns which provide economic opportunities to Residents and other low- and very low-income persons.

Section 3 resident means:

- (1) A public housing resident; or
- (2) An individual who resides in the metropolitan area or non-metropolitan county in which the section 3 covered assistance is expended, and who is:
 - I. A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80% of the median family income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80% of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
 - II. A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50% of the median family income for the area, as determined by the Secretary with adjustments made for smaller or larger families, except that the Secretary may establish income ceilings higher or lower than 50% of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.
- (3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Service area means the geographical area in which the persons benefiting from the Section 3-covered project reside.

The figures below represent very low-income families; bottom figures represent low-income families. The most recent income limits established for each county may be found at:

<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/>.

Subrecipient or Contractor to Insert 2013 Income Limits for Project Location

FY 20XX Income Limit Area	Median Income	FY 20XX Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
		Very Low (50%) Income Limits								
		Low (80%) Income Limits								

**RESIDENT SECTION 3 SELF-CERTIFICATION
AND SKILLS DATA FORM
AFFADAVIT**

STATE OF _____

County of _____

I, _____, a Notary Public of the City/County of _____,
State of _____, do hereby certify that, _____, whose
name is signed to the writing above bearing date on the _____ Day of _____,
20____, has acknowledged the same before me in my State aforesaid.

Given under my hand and official seal, this the _____ day of _____, 20____.

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration Date: _____

(Notarial Seal)

SECTION 3 BUSINESS CONCERN SELF CERTIFICATION

The Georgia Department of Community Affairs (DCA) is seeking to extend the benefits of and to promote compliance with Section 3 by identifying Section 3 Business Concerns and targeting Section 3 Business Concerns for business opportunities, events and educational programs.

In an effort to comply with Federal Section 3 Regulations which promote contract, employment and training opportunities for State of Georgia residents, DCA has instituted a Section 3 Self Certification process.

Businesses seeking certification must complete and submit the attached Section 3 Business Concern Self Certification forms as follow:

1. If your company is qualified because it is owned (51% or more) by one or more Section 3 residents, then complete **Form A, "Section 3 Business Concern – Resident Business Owner(s) Verification"**;

OR

2. If your company is qualified because 30% or more of its full time permanent workforce are Section 3 Residents*, then complete **Form B, "Section 3 Business Concern – 30% + Workforce"**.

OR

3. If more than 25% of all subcontract work to be awarded shall be performed by Section 3 business concerns as described above, then complete **Form C, "Section 3 Business Concern-Subcontractor"**.

Please answer all questions, sign the completed forms, and notarize the affidavit.

Completed packets must be returned to the sub-recipient or contractor as follows:

Name of sub-recipient/contractor: _____

Attn: _____

Mailing Address: _____

If you have any questions or require assistance, please contact:

Name: _____

Phone Number: _____

Email Address: _____

Form A
SECTION 3 BUSINESS CONCERN
Resident Business Owner(s) Verification

A business can be certified as a Section 3 Business Concern if the business is owned (51% or more) by Georgia Section 3 Resident(s).

Name of Owner: _____
Home Street Address: _____
Home City, County, & Zip Code: _____
Name of Business: _____
Percentage of Ownership: _____%

Low- to – Moderate Income (80% of Median)

Check the appropriate box for your family size and income *if your total household income is equal to or less than the Gross Household Income Maximum amount listed for your appropriate household size:*

Check Box	# of Persons in Household	Gross Household Income Maximum
<input type="checkbox"/>	1 Individual	
<input type="checkbox"/>	2 Individuals	
<input type="checkbox"/>	3 Individuals	
<input type="checkbox"/>	4 Individuals	
<input type="checkbox"/>	5 Individuals	
<input type="checkbox"/>	6 Individuals	
<input type="checkbox"/>	7 Individuals	
<input type="checkbox"/>	8 Individuals	

(Effective _____, 2013)

If the business is owned by more than one Section 3 resident, list each owner below and each should submit a separate Resident Business Owner Verification Form (Form A).

Please list additional Section 3 Resident owners of the business below:

Name	Position	% Percentage of Ownership

I certify that I am a resident of the State of Georgia and my total household income last year was not more than the amount shown above for my family size. I further certify the information provided is true and accurate and agree to provide upon request, documents verifying the information submitted to qualify as a Section 3 Business Concern.

Print: _____ Signature: _____ Date: _____

Form B
SECTION 3 BUSINESS CONCERN
30% + Workforce

A business can be certified as a Section 3 Business Concern if at least 30% of its permanent, full-time employees are Section 3 residents, or were Section 3 residents within three years of the date of the first employment with the business. You may also certify as a Section 3 Business Concern if, for this award, you will hire Section 3 residents for at least 30% of your permanent, full-time employees for this specific project. For your firm to be eligible UNDER THIS CRITERIA, you must provide the following information for **all permanent, full-time employees**.

You may attach additional copies of this chart, if necessary.

List All Employees	Date Hired	Section 3 Resident	Job Title/Trade	Salary Range
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Total Number of Employees:	Full-Time: _____	Part-Time: _____	Contract: _____	
Number of Section 3 Residents:				
Section 3 % of Total Workforce:				

I certify that the information provided is true and accurate and agree to provide upon request, any/all documents verifying the information submitted to qualify as a Section 3 Business Concern.

Print Name: _____

Title: _____

Company Name: _____

Signature: _____

Date: _____

Form C
SECTION 3 BUSINESS CONCERN
Subcontractor Awarded

A business can be certified as a Section 3 Business Concern if the firm makes a commitment to subcontract in excess of twenty-five percent (25%) of the total amount of subcontracts to be awarded to: A) Section 3 Resident Owned Businesses; or B) Businesses for which 30% or more of their permanent full-time workforce is comprised of Section 3 Residents.

List all work performed by Section 3 Business Concerns Identified (This Form is to be updated as Section 3 Business Concerns are awarded through the completion of the project):

Name of Business	Qualifying Conditions	Total Contract Award

All identified Section 3 Business Concerns listed above are required to complete a Section 3 Self Certification Application (Forms A – C as appropriate) or provide proof of Section 3 Certification status. Attach all required documents to this form.

I certify that the information provided is true and accurate and agree to provide upon request, any/all documents verifying the information submitted to qualify as a Section 3 business concern.

Print Name: _____

Title: _____

Company Name: _____

Signature: _____

Date: _____

Language Access Plan Template
CDBG Recipients

Instructions:

Refer to the *DCA LAP Policy* and the *DCA Subrecipient Language Access Plan Guidance* and follow the following steps described in detail below:

Step 1: Provide General Information

Step 2: Perform the Four Factor Analysis

Factor 1: The number of LEP people in the jurisdiction

- Use the most recent data release of American Community Survey Table B16001 (Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over) and Table S1601 (Language Spoken at Home) published in December of each year. *Please source all data provided to DCA.*
- Determine the threshold for providing translation

Factor 2: The frequency of interaction

Factor 3: The nature and importance of the activity

Factor 4: The resources available

Step 3: Prepare the Language Access Plan

- Four-Factor Analysis
- Responsible staff and training plan
- Documents to be translated (if needed)
- Plan for complaints and appeals
- Records retention and update plan

Step 1: Provide General Information:

Provide the following information at the beginning of the local government's Language Access plan

- Grantee
- CDBG Grant Number
- Target Area
- Preparer's name, phone number, email address

Step 2: Conduct a Four-Factor Analysis to determine how to provide needed language assistance

The Four Factors are:

Factor 1: The number or proportion of LEP persons eligible to be served or likely to be encountered by the Agency or its federally funded programs.

Use data to answer the question:

How many Limited English Proficient people are in your local government's city or county's jurisdiction?

Attach maps (if applicable) or other relevant data to your Language Access Plan. All data or maps provided must be accurately sourced.

Please use the Census Table B16001 and Table S1601 to find this information. The size of the language group determines the recommended provision for written language assistance.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

Note: In the case where the overall jurisdiction numbers fall below the threshold to provide translated written documents but existing or planned DCA target areas exist, the DCA Subrecipient must evaluate whether there are limited English proficient households within the target areas that may need notification or other LAP services. The Subrecipient's evaluation should use local knowledge or data or other relevant data in conducting its evaluation and should indicate its conclusions regarding the steps necessary reach out to these households in the language they speak to ensure that adequate notification is achieved. This evaluation will be particularly important for housing grants where eligible applicants for assistance may need application or other documents translated in order to take advantage of available services.

Factor 2: The frequency with which LEP persons come into contact with the Agency's programs:

The frequency with which a program engages with the public can vary. For example: *Daily*: walk-ins at a housing counseling agency; *Annually*: A program accepts applications for assistance once a year.

For CDBG grants, grantees must engage with the public at these critical steps:

- a. When notifying the public about a grant award application and its proposed activities
- b. When notifying the public about the grant award and its funded activities
- c. When seeking applicants to participate in the program (e.g., when seeking homeowners for rehabilitation assistance)
- d. When seeking qualified contractors
- e. When working with homeowners selected for assistance
- f. When seeking bids from builders to construct the homes
- g. When notifying the public about the grant award closeout and its accomplishments

Identify how your program engages with the public and how frequently does this occur

Factor 3: The nature and importance of the programs, activities, or services to people's lives

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP persons, the more likely the need for language services. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual.

Answer the following questions:

What is the nature of the program? e.g. Providing improved water and sewer services

What is the importance of the program? Would denial or delay of access to services or information could serious or even life-threatening implications for the LEP individual?

Factor 4: The resources available and costs to the recipient.

Read the section in the guidance on this factor and the expectations from HUD about cost reasonableness. DCA can assist with translation services if necessary. Language assistance that a sub recipient might provide to LEP persons includes, but is not limited to

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and sub recipients of the availability of LEP services; or

- Referrals to community liaisons proficient in the language of LEP persons.
- Provide "I speak" card (see policy documents for details)

Determine the resources to be made available if any

Step 3: Prepare a Language Access Plan (LAP) and submit it to your DCA representative that includes:

- a. The Four-Factor Analysis
- b. The name of the individual responsible for coordination of LEP compliance
- c. A training plan on LEP requirements for all staff involved in programs and activities funded by the federal government and awarded by DCA
- d. A list of vital documents to be translated (if necessary) and schedule for translating and disseminating vital documents
- e. A plan for complaints and appeals. See the complaints and appeals requirement in the DCA policy.
- f. A policy for updating the Four-Factor Analysis and the LAP every five years. Note: The CDBG grant term is two years. A grantee can apply for CDBG and use the established LAP for multiple grant terms.
- g. A plan to maintain records regarding its efforts to comply with Title VI LEP obligations.

DCA Sub Recipient Language Access Plan Guidance

Pursuant to the requirements of Title VI of the Civil Rights Act of 1964, all DCA sub recipients (including State recipients) must take timely and reasonable steps to provide Limited English Proficient (LEP) persons with meaningful access to programs and activities funded by the federal government and awarded by DCA.

Within sixty days of award of funds, sub recipients must undertake the following steps:

- 1.) Conduct a Four-Factor Analysis to determine how to provide needed language assistance.
- 2.) Prepare a Language Access Plan (LAP) and submit it to your DCA representative that includes:
 - a. The Four-Factor Analysis
 - b. The name of the individual responsible for coordination of LEP compliance
 - c. A training plan on LEP requirements for all staff involved in programs and activities funded by the federal government and awarded by DCA
 - d. A list of vital documents to be translated (if necessary) and schedule for translating and disseminating vital documents
 - e. A policy for updating the Four-Factor Analysis and the LAP every five years
 - f. A plan to maintain records regarding its efforts to comply with Title VI LEP obligations.
 - g. A plan for complaints and appeals. See the complaints and appeals requirement in the DCA Policy.

The following document provides guidance on how to accomplish these steps. Additional resources on HUD compliance policies and guidance can be found in the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons Notice: <https://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>. Complete LEP resources and information for all federal programs can be found on this website: <https://www.lep.gov/>

Conducting the Four-Factor Analysis

The Four-Factor Analysis includes:

- 1.) The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the sub recipient if the persons received adequate education and outreach and the sub recipient provided sufficient language services).
- 2.) The frequency with which LEP persons come into contact with the program;
- 3.) The nature and importance of the program, activity, or service provided by the program; and
- 4.) The resources available and costs to the recipient.

Factor 1: Determining the number of LEP persons served or encountered in the eligible service population:

Sub recipients must use the most recent and relevant data to determine the number of LEP persons in the service area. Most sub recipients will depend on the most recent release of data from the American

Community Survey Table B16001 and Table S1601, updated each year in December. This data may be supplemented by local knowledge or data, especially when evaluating sub jurisdictional areas such as target areas. All data provided must be accurately sourced.

The size of the language group determines the recommended provision for written language assistance.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

A vital document is any document that is critical for ensuring meaningful access to the recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Leases, rental agreements and other housing documents of a legal nature enforceable in U.S. courts should be in English. See more about vital documents and legal documents in the FAQ below.

Factor 2: The frequency with which LEP persons come into contact with the program:

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely the need for enhanced language services in that language. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require extensive assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

Factor 3: The nature and importance of the program, activity, or service provided by the program:

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP persons, the more likely the need for language services. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual.

Decisions by HUD, another federal, state, or local entity, or the recipient to make a specific activity compulsory in order to participate in the program, such as filling out particular forms, participating in administrative hearings, or other activities, can serve as strong evidence of the program's importance.

Factor 4: The resources available and costs to the recipient:

Language assistance that a sub recipient might provide to LEP persons includes, but is not limited to

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and sub recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.
- Provide "I speak" card (more in the FAQ below)

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. Resource and cost issues, however, can often be reduced by technological advances; sharing of language assistance materials and services among and between recipients, advocacy groups, and federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective. Large entities and those entities serving a significant substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs. This four-factor analysis necessarily implicates the "mix" of LEP services the recipient will provide. Recipients have two main ways to provide language services: Oral interpretation in person or via telephone interpretation service (hereinafter "interpretation") and through written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis, while in others the LEP individual may be referred to another office of the recipient for language assistance. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a public housing provider in a largely Hispanic neighborhood

may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many have already made such arrangements.) By contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high – such as in the case of a voluntary public tour of a recreational facility – in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

Language Access Plan Frequently Asked Questions:

Who are limited English proficient (LEP) persons?

For persons who, as a result of national origin, do not speak English as their primary language and who have a limited ability to speak, read, write, or understand. For purposes of Title VI and the LEP Guidance, persons may be entitled to language assistance with respect to a particular service, benefit, or encounter.

What is Title VI and how does it relate to providing meaningful access to LEP persons?

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who are LEP can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination.

What do Executive Order (EO) 13166 and the Guidance require?

EO 13166, signed on August 11, 2000, directs all federal agencies, including the Department of Housing and Urban Development (HUD), to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. Pursuant to EO 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the Department of Justice (DOJ) LEP Guidance apply to the programs and activities of federal agencies, including HUD. In addition, EO 13166 requires federal agencies to issue LEP Guidance to assist their federally assisted recipients in providing such meaningful access to their programs. This Guidance must be consistent with the DOJ Guidance. Each federal agency is required to specifically tailor the general standards established in DOJ's Guidance to its federally assisted recipients. On December 19, 2003, HUD published such proposed Guidance.

Who must comply with the Title VI LEP obligations?

All programs and operations of entities that receive financial assistance from the federal government, including but not limited to state agencies, local agencies and for-profit and non-profit entities, must comply with the Title VI requirements. A listing of most, but not necessarily all, HUD programs that are federally assisted may be found at the "List of Federally Assisted Programs" published in the Federal

Register on November 24, 2004 (69 FR 68700). Sub-recipients must also comply (i.e., when federal funds are passed through a recipient to a sub-recipient). As an example, Federal Housing Administration (FHA) insurance is not considered federal financial assistance, and participants in that program are not required to comply with Title VI's LEP obligations, unless they receive federal financial assistance as well. [24 CFR 1.2 (e)].

Does a person's citizenship and immigration status determine the applicability of the Title VI LEP obligations?

United States citizenship does not determine whether a person is LEP. It is possible for a person who is a United States citizen to be LEP. It is also possible for a person who is not a United States citizen to be fluent in the English language. Title VI is interpreted to apply to citizens, documented non-citizens, and undocumented non-citizens. Some HUD programs require recipients to document citizenship or eligible immigrant status of beneficiaries; other programs do not. Title VI LEP obligations apply to every beneficiary who meets the program requirements, regardless of the beneficiary's citizenship status.

What is expected of recipients under the Guidance?

Federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and activities. To do this, the recipient should

- (1) Conduct the four-factor analysis;
- (2) Develop a Language Access Plan (LAP); and
- (3) Provide appropriate language assistance.

The actions that the recipient may be expected to take to meet its LEP obligations depend upon the results of the four-factor analysis including the services the recipient offers, the community the recipient serves, the resources the recipient possesses, and the costs of various language service options. All organizations would ensure nondiscrimination by taking reasonable steps to ensure meaningful access for persons who are LEP. HUD recognizes that some projects' budgets and resources are constrained by contracts and agreements with HUD. These constraints may impose a material burden upon the projects. Where a HUD recipient can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis. However, refusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI. The agency may, for example, have a contract with another organization to supply an interpreter when needed; use a telephone service line interpreter; or, if it would not impose an undue burden, or delay or deny meaningful access to the client, the agency may seek the assistance of another agency in the same community with bilingual staff to help provide oral interpretation service.

What is the four-factor analysis?

Recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue financial burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

- 5.) The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the sub recipient if the persons received adequate education and outreach and the sub recipient provided sufficient language services);
- 6.) The frequency with which LEP persons come into contact with the program;
- 7.) The nature and importance of the program, activity, or service provided by the program; and
- 8.) The resources available and costs to the sub recipient. Examples of applying the four-factor analysis to HUD-specific programs are located in Appendix A of the LEP Final Guidance.

What are examples of language assistance?

Language assistance that a sub recipient might provide to LEP persons includes, but is not limited to

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and sub recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.

What is a Language Access Plan (LAP) and what are the elements of an effective LAP?

After completing the four-factor analysis and deciding what language assistance services are appropriate, a sub recipient may develop an implementation plan or LAP to address identified needs of the LEP populations it serves. Some elements that may be helpful in designing an LAP include identifying LEP persons who need language assistance and the specific language assistance that is needed;

- Identifying the points and types of contact the agency and staff may have with LEP persons;
- Identifying ways in which language assistance will be provided; • Outreaching effectively to the LEP community;
- Training staff;
- Determining which documents and informational materials are vital;
- Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide);
- Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);
- Providing interpreters for large, medium, small, and one-on-one meetings;

- Developing community resources, partnerships, and other relationships to help with the provision of language services; and
- Making provisions for monitoring and updating the LAP, including seeking input from beneficiaries and the community on how it is working and on what other actions should be taken.

What is a vital document?

A vital document is any document that is critical for ensuring meaningful access to the sub recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information is not provided accurately or in a timely manner. For instance, applications for auxiliary activities, such as certain recreational programs in public housing, would not generally be considered a vital document, whereas applications for housing would be considered vital. However, if the major purpose for funding the sub recipient were its recreational program, documents related to those programs would be considered vital. Where appropriate, sub recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

How may a sub recipient determine the language service needs of a beneficiary?

Sub recipients should elicit language service needs from all prospective beneficiaries (regardless of the prospective beneficiary's race or national origin). If the prospective beneficiary's response indicates a need for language assistance, the sub recipient may want to give applicants or prospective beneficiaries a language identification card (or "I speak" card). Language identification cards invite LEP persons to identify their own language needs. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both Vietnamese and English, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. Download the "I speak" card [here](#).

How may a sub recipient's limited resources be supplemented to provide the necessary LEP services?

A sub recipient should be resourceful in providing language assistance as long as quality and accuracy of language services are not compromised. The sub recipient itself need not provide the assistance, but may decide to partner with other organizations to provide the services. In addition, local community resources may be used if they can ensure that language services are competently provided. In the case of oral interpretation, for example, demonstrating competency requires more than self-identification as bilingual. Some bilingual persons may be able to communicate effectively in a different language when communicating information directly in that language, but may not be competent to interpret between English and that language.

In addition, the skill of translating is very different than the skill of interpreting and a person who is a competent interpreter may not be a competent translator. To ensure the quality of written translations

and oral interpretations, HUD encourages sub recipients to use members of professional organizations. Examples of such organizations are national organizations, including American Translators Association (written translations), National Association of Judicial Interpreters and Translators, and International Organization of Conference Interpreters (oral interpretation); state organizations, including Colorado Association of Professional Interpreters and Florida Chapter of the American Translators Association; and local legal organizations such as Bay Area Court Interpreters.

While HUD recommends using the list posted on the official LEP website, its limitations must be recognized. Use of the list is encouraged, but not required or endorsed by HUD. It does not come with a presumption of compliance. There are many other qualified interpretation and translation providers, including in the private sector.

May sub recipients rely upon family members or friends of the LEP person as interpreters?

Generally, sub recipients should not rely on family members, friends of the LEP person, or other informal interpreters. In many circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Therefore, such language assistance may not result in an LEP person obtaining meaningful access to the sub recipients' programs and activities. However, when LEP persons choose not to utilize the free language assistance services expressly offered to them by the sub recipient but rather choose to rely upon an interpreter of their own choosing (whether a professional interpreter, family member, or friend), LEP persons should be permitted to do so, at their own expense. Sub recipients may consult HUD LEP Guidance for more specific information on the use of family members or friends as interpreters. While HUD guidance does not preclude use of friends or family as interpreters in every instance, HUD recommends that the sub recipient use caution when such services are provided.

Are leases, rental agreements and other housing documents of a legal nature enforceable in U.S. courts when they are in languages other than English?

Generally, the English language document prevails. The translated documents may carry a disclaimer. For example "This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document."

Where both the landlord and tenant contracts are in languages other than English, state contract law governs the leases and rental agreements. HUD does not interpret state contract law. Therefore, s regarding the enforceability of housing documents of a legal nature that are in languages other than English should be referred to a lawyer well-versed in contract law of the appropriate state or locality. Neither EO 13166 nor HUD LEP Guidance grants an individual the right to proceed to court alleging violations of EO 13166 or HUD LEP Guidance.

In addition, current Title VI case law only permits a private right of action for intentional discrimination and not for action based on the discriminatory effects of a sub recipient's practices. However,

individuals may file administrative complaints with HUD alleging violations of Title VI because the HUD sub recipient failed to take reasonable steps to provide meaningful access to LEP persons.

The local HUD office will intake the complaint, in writing, by date and time, detailing the complainant's allegation as to how the state failed to provide meaningful access to LEP persons. HUD will determine jurisdiction and follow up with an investigation of the complaint.

Who enforces Title VI as it relates to discrimination against LEP persons?

Most federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act of 1964. To the extent that a sub recipient's actions violate Title VI obligations, then such federal agencies will take the necessary corrective steps. The Secretary of HUD has designated the Office of Fair Housing and Equal Opportunity (FHEO) to take the lead in coordinating and implementing EO 13166 for HUD, but each program office is responsible for its sub recipients' compliance with the civil-rights related program requirements (CRRPRs) under Title VI.

How does a person file a complaint if he/she believes the state is not meeting its Title VI LEP obligations?

If a person believes that the state is not taking reasonable steps to ensure meaningful access to LEP persons, that individual may file a complaint with HUD's local Office of FHEO. For contact information of the local HUD office, go to the HUD website or call the housing discrimination toll free hotline at 800-669-9777 (voice) or 800-927-9275 (TTY).

What will HUD do with a complaint alleging noncompliance with Title VI obligations?

HUD's Office of FHEO will conduct an investigation or compliance review whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI obligations by the state. If HUD's investigation or review results in a finding of compliance, HUD will inform the state in writing of its determination. If an investigation or review results in a finding of noncompliance, HUD also will inform the state in writing of its finding and identify steps that the state must take to correct the noncompliance. In a case of noncompliance, HUD will first attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD may then secure compliance by

- (1) Terminating the financial assistance of the state only after the state has been given an opportunity for an administrative hearing; and/or
- (2) Referring the matter to DOJ for enforcement proceedings.

How will HUD evaluate evidence in the investigation of a complaint alleging noncompliance with Title VI obligations?

Title VI is the enforceable statute by which HUD investigates complaints alleging a sub recipient's failure to take reasonable steps to ensure meaningful access to LEP persons. In evaluating the evidence in such complaints, HUD will consider the extent to which the state followed the LEP Guidance or otherwise demonstrated its efforts to serve LEP persons. HUD's review of the evidence will include, but may not be limited to, application of the four-factor analysis identified in HUD LEP Guidance. The four-factor analysis provides HUD a framework by which it may look at all the programs and services that the sub recipient provides to persons who are LEP to ensure meaningful access while not imposing undue burdens on sub recipients.

What is a safe harbor?

A "safe harbor," in the context of this guidance, means that the sub recipient has undertaken efforts to comply with respect to the needed translation of vital written materials. If a sub recipient conducts the four-factor analysis, determines that translated documents are needed by LEP applicants or beneficiaries, adopts an LAP that specifies the translation of vital materials, and makes the necessary translations, then the sub recipient provides strong evidence, in its records or in reports to the agency providing federal financial assistance, that it has made reasonable efforts to provide written language assistance.

What "safe harbors" may sub recipients follow to ensure they have no compliance finding with Title VI LEP obligations?

HUD has adopted a "safe harbor" for translation of written materials. The Guidance identifies actions that will be considered strong evidence of compliance with Title VI obligations. Failure to provide written translations under these cited circumstances does not mean that the sub recipient is in noncompliance.

Rather, the "safe harbors" provide a starting point for sub recipients to consider

- Whether and at what point the importance of the service, benefit, or activity involved warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the nature of the information sought warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the number or proportion of LEP persons served warrants written translations of commonly used forms into frequently encountered languages other than English; and
- Whether the demographics of the eligible population are specific to the situations for which the need for language services is being evaluated. In many cases, use of the "safe harbor" would mean provision of written language services when marketing to the eligible LEP population within the market area. However, when the actual population served (e.g., occupants of, or applicants to, the housing project) is used to determine the need for written translation services, written translations may not be necessary.

The table below sets forth safe harbors for written translations.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

When HUD conducts a review or investigation, it will look at the total services the sub recipient provides, rather than a few isolated instances.

Is the sub recipient expected to provide any language assistance to persons in a language group when fewer than 5 percent of the eligible population and fewer than 50 in number are members of the language group?

HUD recommends that sub recipients use the four-factor analysis to determine whether to provide these persons with oral interpretation of vital documents if requested.

Are there "safe harbors" provided for oral interpretation services?

There are no "safe harbors" for oral interpretation services. Sub recipients should use the four-factor analysis to determine whether they should provide reasonable, timely, oral language assistance free of charge to any beneficiary that is LEP (depending on the circumstances, reasonable oral language assistance might be an in-person interpreter or telephone interpreter line).

Is there a continued commitment by the Executive Branch to EO 13166?

There has been no change to the EO 13166. The President and Secretary of HUD are fully committed to ensuring that LEP persons have meaningful access to federally conducted programs and activities.

Did the Supreme Court address and reject the LEP obligation under Title VI in *Alexander v. Sandoval* [121 S. Ct. 1511 (2001)]?

The Supreme Court did not reject the LEP obligations of Title VI in its *Sandoval* ruling. In *Sandoval*, 121 S. Ct. 1511 (2001), the Supreme Court held that there is no right of action for private parties to enforce the federal agencies' disparate impact regulations under Title VI. It ruled that, even if the Alabama Department of Public Safety's policy of administering driver's license examinations only in English violates Title VI regulations, a private party may not bring a lawsuit under those regulations to enjoin Alabama's policy. *Sandoval* did not invalidate Title VI or the Title VI disparate impact regulations, and federal agencies' (versus private parties) obligations to enforce Title VI. Therefore, Title VI regulations remain in effect. Because the legal basis for the Guidance required under EO 13166 is Title VI and, in

HUD's case, the civil rights-related program requirements (CRRPR), dealing with differential treatment, and since Sandoval did not invalidate either, the EO remains in effect.

What are the obligations of HUD sub recipients if they operate in jurisdictions in which English has been declared the official language?

In a jurisdiction where English has been declared the official language, a HUD sub recipient is still subject to federal nondiscrimination requirements, including Title VI requirements as they relate to LEP persons.

Where can I find more information on LEP?

You should review HUD's LEP Guidance: <https://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>

Additional information may also be obtained through the federal-wide LEP website and HUD's LEP website: <https://www.lep.gov/>